

## Federal Communications Commission

DA 94-1076

FCC MAIL SECTION  
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Federal Communications Commission  
Washington, D.C. 20554

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MM Docket No. 94-119

In the Matter of

Amendment of Section 73.202(b), RM-8104  
Table of Allotments,  
FM Broadcast Stations.  
(Hermitage, Missouri)

## NOTICE OF PROPOSED RULE MAKING

Adopted: September 30, 1994; Released: October 6, 1994

Comment Date: November 28, 1994

Reply Comment Date: December 13, 1994

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by KYOO Broadcasting Company ("petitioner"), seeking the allotment of Channel 226A to Hermitage, Missouri, as that community's first local service.<sup>1</sup> Petitioner submitted information in support of the proposal and expressed its intention to apply for the channel, if allotted.<sup>2</sup>

2. We believe petitioner's proposal warrants consideration. Channel 226A can be allotted to Hermitage, Missouri, consistent with the Commission's spacing requirements provided there is a site restriction 13.1 kilometers (8.1 miles) east of the community.<sup>3</sup> The site restriction will prevent a short spacing to Station KMXV, Channel 227C, Kansas City, Missouri. Although Channel 226A at Hermitage is currently short spaced to Station KYOO-FM, Channel 226A, Half Way, Missouri, the license for Station KYOO-FM was modified in MM Docket 93-186 to specify operation on Channel 256A in lieu of Channel 226A.<sup>4</sup> Therefore, the grant of a license for Channel 226A at Hermitage may be withheld until Station KYOO-FM, Half Way, is licensed on the new channel.

3. In view of the fact that the proposed allotment would provide a first local service to Hermitage, Missouri, the Commission believes it would serve the public interest to

propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City Channel No.  
Hermitage, Missouri Proposed  
226A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before November 28, 1994, and reply comments on or before December 13, 1994, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

William J. Pennington, III  
Post Office Box 4203  
Wilmington, North Carolina 28406

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment

<sup>1</sup> Petitioner is the licensee of Station KYOO-FM, Half Way, Missouri.

<sup>2</sup> The Commission adopted new local ownership rules based on market size and audience share which enables petitioner to file an application for Channel 226A at Hermitage, if allotted. For stations in markets with 14 or fewer radio stations, a single licensee will be permitted to own up to three stations, no more than two of which are in the same service, provided that the owned stations represent less than 50 percent of the stations in the market. See 47 C.F.R. Section 73.3555(a)(1)(i). See also

*Revision of Radio Rules and Policies. Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, 7 FCC Rcd 6387 (1992). Petitioner did not provide information showing it is eligible to acquire a second station at Hermitage, and is therefore requested to do so in its comments.

<sup>3</sup> The coordinates for Channel 226A at Hermitage are 37-56-00 and 93-10-00.

<sup>4</sup> The *Report and Order* in MM Docket 93-186 was adopted September 12, 1994.

which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Acting Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties

to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.